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26271	7590	07/05/2005	EXAMINER	
FULBRIGHT & JAWORSKI, LLP			KRECK, JOHN J	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/773,815
Filing Date: January 31, 2001
Appellant(s): CARPENTER, WILLIAM T.

John Mings
For Appellant

EXAMINER'S ANSWER

MAILED

JUL 05 2005

GROUP 3600

This is in response to the appeal brief filed 4/11/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 11-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Independent claim 11 calls for a step of "calculating a moment of stability". The specification fails to disclose any equations or methods to perform such a calculating step. Independent claim 11 calls for "positioning the mass" The specification also fails to disclose how the mass would be captured and placed in predetermined locations. In the case of solid, would standard ~~earth~~ earthmoving equipment be used? How long would it take? In the case of liquid, would pumps be used? How many pumps would be required? How long would the process take? It is presumed that the scale of "positioning the mass" is very large, and it would be very time consuming: how would this time delay (between commencing the positioning the mass, and the mass reaching its final position) affect the character of rotation? The specification also fails to give any examples of how much mass would be required to make an appreciable change in the axis of rotation. Absence of supporting disclosure

would require undue experimentation for one skilled in the art to carry out the claimed invention.

2. Claims 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chao (Anthropogenic impact on global geodynamics due to reservoir water impoundment) in view of White (Pole Shift: predictions and prophesies of the ultimate disaster); and Brown (Cataclysms of the Earth)

Chao teaches that impoundment of water in large reservoirs has changed the character of rotation of the Earth's axis, including shifting the pole (Introduction, third paragraph). Chao further teaches the steps of measuring the mass of the planet, determining the center of mass of the planet, and characterizing the axis of rotation of the planet.

Chao fails to explicitly disclose the steps of selecting a desired character of rotation; calculating a moment of stability; determining a position and mass of a compensating substance; and positioning the mass.

White teaches that a pole shift is "the ultimate disaster" and further teaches the desirability of preventing pole shift (see pages 81 and 181). The desirability of preventing pole shift is also taught by Brown (see "An Exhortation" page 152), who also teaches that the prevention is an "engineering problem" (see page 153)

In light of the combined teaching of Chao, White, and Brown, it would have been obvious to one of ordinary skill in the art at the time of the invention to have measured the mass of a planet, determined the center of mass, characterized the axis of rotation,

selected a desired character of rotation, calculated a moment of stability required to cause the desired character of rotation, determined a position of and mass of a compensating substance sufficient to effect the moment of stability, and positioned the mass in the position, as called for in claim 11, in order to correct the alterations to the axis of rotation characterized by Chao and to prevent "ultimate disaster".

With regards to claim 12, see page 3531, col. 2, it would have been further obvious to one of ordinary skill in the art at the time of the invention to have the position of the compensating substance in an underground cavity in order to correct the alterations to the axis of rotation characterized by Chao.

With regards to claim 13, Chao teaches the aboveground cavity (reservoir), thus it would have been further obvious to one of ordinary skill in the art at the time of the invention to have the position of the compensating substance in an aboveground cavity in order to correct the alterations to the axis of rotation characterized by Chao.

With regards to claim 14, Brown teaches the moving solid substance (ice) it would have been further obvious to one of ordinary skill in the art at the time of the invention to have the compensating substance a solid, because solid substances are easier to control, in order to correct the alterations to the axis of rotation characterized by Chao.

With regards to claim 15-17, Chao teaches the liquid, thus it would have been further obvious to one of ordinary skill in the art at the time of the invention to have the compensating substance a liquid in order to correct the alterations to the axis of rotation characterized by Chao.

With regards to claim 18-20, Chao teaches the liquid is water, thus it would have been further obvious to one of ordinary skill in the art at the time of the invention to have the compensating substance being water in order to correct the alterations to the axis of rotation characterized by Chao.

(10) Response to Argument

(A) Enablement:

Appellant has argued that the Examiner has failed to "construe the rejected claims" and "failed to construe all claim terms". The claims and claim terms have all been construed using common English, using the definitions of terms that are in general usage.

Appellant has argued that Examiner has failed to rebut the presumption that the disclosure is accurate. In response, the Examiner has not asserted that the disclosure is inaccurate, rather that the disclosure is incomplete and non enabling in that it fails to provide sufficient guidance to practice the claimed invention.

Appellant has argued that one of ordinary skill in the art could practice the invention with routine experimentation "using known methods of calculating, simulating, or otherwise predicting results" (emphasis added). In response, it is noted that appellant has not provided any evidence that such methods are known for a process of changing the axis of rotation of the Earth.

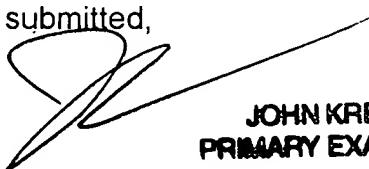
(B) Obviousness:

Appellant has argued that the Examiner has not satisfied the first (demonstrate some suggestion or motivation to modify or combine) and third (show the prior art teaches or suggests all limitations) criteria for a *prima facie* case of obviousness. It is agreed that all references show or at least suggest the apparent problem of the Earth's axis of rotation being in an undesirable state. Each of the references indicate that the undesirable character of rotation is due to movement or repositioning of mass on or near the surface of the Earth: Chao, for example indicates that massive redistribution of water impounded in dams over the last century (see figure 2) has affected the axis of rotation resulting in a change of length-of-day of nearly 10 microseconds (figure 6). Chaos, in describing the change; suggests the each of the claimed steps: selecting (selecting the character of rotation prior to change, e.g. as it existed before 1950, see second paragraph of introduction); calculating; determining; and positioning (e.g. behind dams or by removing water from behind dams). Such suggestion is found in Chao, because Chao clearly teaches that such change in the character of rotation is anthropogenic in nature: Chao clearly teaches that such changes are caused by man, albeit inadvertently; therefore Chao suggests to one of ordinary skill in the art a further change or repair of such change. The motivation to make the modification to Chao is found in White and Brown; who teach the possible catastrophic consequences of an undesirable character of rotation.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

John Kreck



JOHN KRECK
PRIMARY EXAMINER

Conferees:

Heather Shackelford 

David Bagnell 